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ABSTRACT

This brief examines critical issues that charter schools and their authorizers will face as states respond to the No Child Left Behind Act's (NCLB) new accountability provisions. The first section provides a context for the NCLB and summarizes its major accountability provisions, discussing timelines for states to put these systems into place and describing the new federal definition of adequate yearly progress. The second section describes key tensions or challenges between NCLB's requirements and existing powers and practices of authorizers. Challenges include measuring school performance and setting the bar, potential misalignments of timelines, and measuring the performance of at risk students. The third section discusses how states and authorizers might respond to these new demands and describes how value-added analysis could be a helpful component in authorizer accountability systems. The brief concludes that many issues raised by charter school leaders will be important for traditional public schools as well; NCLB provides states enough latitude for authorizers to oversee charter schools in a fair and transparent way; and it is not clear whether the act's prescribed consequences for poor performance will take precedence over the terms of a given authorizer's preexisting charters or contracts. A timeline for corrective action is attached. (SM)

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Education Performance Network

An Affiliate of New American Schools

POLICY BRIEF

Charter Schools and the New Federal Accountability Provisions

Paul A. Herdman, Nelson Smith, and Cynthia Skinner[1]
March 2002

INTRODUCTION

What will the recent reauthorization of the Elementary and Secondary Education Act – known as the No Child Left Behind Act (NCLB) – mean for public charter schools? This brief examines some of the critical issues that charter schools and their authorizers will face as states respond to the Act's new accountability provisions.

From the day they receive their charters, founders are in a high stakes accountability environment. Parents are critical consumers and their choice is a charter school's most essential measure of accountability. "Authorizers,"[2] the governing bodies that grant and oversee charters, provide another kind of accountability by regular monitoring of schools' financial and academic performance, and generally overseeing compliance with state and federal law.

If they fail to meet the expectations of parents or authorizers, charter schools may have to shut their doors. NCLB now applies this accountability relationship to all public schools, districts, and states by requiring annual measurement of student progress and prescribing real consequences for failing performance. With respect to charter schools, the Act simply states that its accountability provisions "shall be overseen…in accordance with State charter school law."[3] Additional report language says that charter schools are

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[1] The Education Performance Network, an affiliate of New American Schools, prepared this brief for the Charter School Friends National Network through support from the Kinship Foundation. Paul Herdman, Ed.D., is Managing Director of Accountability and Evaluation Services; Nelson Smith is Vice President for New School Services; and Cynthia Skinner is a Senior Project Manager.

[2] Depending on state laws, charter school authorizers may include state boards of education, colleges and universities, municipal bodies, special-purpose agencies, and, most commonly, local school districts.

[3] (Section 1111(b)(2)(K).

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"subject to the same accountability requirements of this Act as they apply to other public schools" and recognizes the role of authorizers in the process.

While the legislation echoes the stress on outcomes-oriented accountability found in many state frameworks and in the charter school model specifically, it also complicates matters by prescribing measures and consequences that may be out of synch with oversight systems already in place for charter schools in the District of Columbia, Puerto Rico and the 37 states with charter laws. How can states – and especially, their charter-authorizing agencies – balance their common commitment to high standards of achievement for all public schools with the flexibility and creativity that gives vitality to the charter concept?

The core conclusions of this brief are:

- Many of the issues raised by charter school leaders (such as the importance of measuring value-added gains over time or how the Act's timelines for corrective action will play out for new schools) will be important for traditional public schools as well.
- NCLB provides states enough latitude for authorizers to oversee charter schools in a fair and transparent way.
- It is not clear whether the Act's prescribed consequences for poor performance will take precedence over the terms of a given authorizer's pre-existing charters or contracts.

The brief is organized into three major sections:

- Section One provides *context* on NCLB and summarizes its major accountability provisions.
- Section Two describes several key tensions or *challenges* between NCLB's requirements and existing powers and practices of authorizers.
- Section Three hypothesizes how authorizers might *respond* to these new demands and describes how value-added analysis could be a helpful component in authorizer accountability systems.

I. CONTEXT

Summary of Key Accountability Provisions

NCLB builds on the previous reauthorizations of ESEA, restoring the annual testing obligation of 1988 and retaining the standards-based emphasis of 1994. It also provides more specificity in terms of defining how student progress should be measured and reported in an effort to reduce the variation from state to state.

Title I, subpart A of the 2002 legislation requires states to develop accountability systems that include all public schools, including charters; administer annual testing in grades 3-8; define "Adequate Yearly Progress" (AYP) toward a goal of 100 percent proficiency in key subject areas within twelve years; and report assessment data annually at the state,

local education agency (LEA), and school level, disaggregated by student demographic subgroups including:

- economically disadvantaged students;
- students with disabilities;
- students with limited English proficiency; and
- major racial and ethnic groups.

This new legislation also calls for consequences if states, LEAs or schools do not make their prescribed annual gains. If student performance does not improve over time, schools and districts will need to provide public school choice options to their parents and schools can ultimately be subject to reconstitution. Likewise, failing states run the risk of losing some of their Title I administrative funds if they fail to meet AYP over consecutive years.

The timeline for states to put these systems into place begins almost immediately. Some of the most important implementation deadlines are summarized below:

2002-03 school year

- States and districts must issue report cards to the public.
- Schools already identified as in need of improvement under prior Title I regulations are carried over into the new timeline for corrective action.[4]
- States must set a "starting point" for Adequate Yearly Progress (AYP) based on 2001-02 school year data.
- Districts must assess Limited English Proficient (LEP) students for English proficiency.
- All states must participate in the National Assessment of Educational Progress 4th and 8th grade reading and math tests.

2005-06 school year

- States must have adopted standards for science.
- Annual statewide assessments for reading and math in grades 3-8 must be in place.

2007-08 school year

- Annual science assessments must be in place for at least one grade in each of the following grade spans: 3-5, 6-9, and 10-12.

2013-14 school year

- Target date for all students being "proficient" in reading, mathematics and science across states, districts, and schools.

Meeting these new requirements will be a challenge for most states.[5] However, the financial leverage of Title I will provide an incentive for states to work hard to meet this

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[4] See page 4 and the Attachment for more on the timeline for corrective action.

[5] According to *Just for the Kids*, a non-profit partner in the National Center for Educational Accountability, only 15 states – Arkansas, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Massachusetts,

challenge. Since charter schools are required under Section 5210 of the Act to take "State assessments that are required of other schools," many will face new and different tests. Authorizers that have fashioned their oversight policies in the absence of year-to-year tests will have to rethink their approach.

Adequate Yearly Progress Defined

NCLB provides a new federal definition of Adequate Yearly Progress (AYP) that is more specific than that of the 1994 reauthorization:

- Each state, using data from the 2001-2002 school year, must establish a starting point for measuring student progress in meeting or exceeding the "proficient" level of academic achievement on state assessments.[6]
- States must develop a 12-year timeline in which all students, within each of the "disaggregated" subgroups, will attain proficiency on the state assessments.
- States must develop annual measurable objectives that are consistent across schools and student subgroups and increase in equal increments over 12 years, with the first increase required to occur in not more than two years, and the remaining increases to occur in not more than every three years.

Within these boundaries, the Act provides states with some discretion. State education agencies may establish a uniform procedure for averaging data over multiple years and across grades, or make their own determination of AYP as long as it is:

- Based primarily on academic indicators (e.g., student performance on tests);
- Technically rigorous; and,
- Applied to school, district, and state levels of progress (Section 1111(b)(2)(C)).

Section 1111(b)(J) of the Act provides that, "for the purpose of determining whether schools are making [AYP], the State *may* establish a uniform procedure for averaging data" (emphasis added) that generates average proficiency levels over multiple years and across grades in a school. Such an approach for measuring AYP could involve establishing a baseline of "proficiency" across all schools and subgroups in year one and then calculating increases in the percentage of proficient students in 12 equal increments. For example, if it is determined that 28% of Latino students are performing at the proficient level as of 2002, then the state has 12 years to close that gap of 72%. Put another way, the state must move, on average, an additional 6% (72% divided by 12) of its Latino students across the proficiency threshold each year for 12 years.

Michigan, Minnesota, Mississippi, Missouri, South Dakota, Tennessee, Texas, and Vermont – have testing systems that currently meet the testing criteria; three of these states (Connecticut, Louisiana, and Tennessee) are more limited in their ability to match records. Only four states (California, Florida, Utah, and Wisconsin) have the ability to disaggregate the data as NCLB requires.

[6] In establishing this starting point, the state must use the higher of either the proficiency level of the state's lowest-achieving group or the proficiency level of the students in the school at the 20th percentile in the state, among all schools ranked by the percentage of students at the proficient level.

While this process may seem straightforward, the details will likely play out differently in each state. Defining the threshold for "proficient" may become more consistent with the introduction of the National Assessment of Educational Progress (NAEP) as a national benchmark (Section 1112(b)(F)), but this definition will likely continue to vary across states. Further, most states simply do not have testing systems that can measure annual performance in math and language arts in grades three through eight. Because the cost and time associated with such a system are prohibitive, it may take some time before all states are able to produce the raw data necessary to accurately measure student performance over time much less analyze it appropriately.

Timeline for Corrective Action

What happens if a school, district or state does not make the expected gains? NCLB calls for consequences at all levels of the system, and those sanctions begin almost immediately. The Attachment indicates that in 2002, schools that are currently on state watch lists – approximately 6,700 nationally[7] – will be identified for *school improvement*. If a school on such a list does not make AYP by the end of its second year on the list, its LEA must notify parents of other public school options and provide the school with technical assistance. The same holds for year three, adding a new responsibility for the school to use a percentage of its Title I funds to cover student supplemental support and transportation costs for students wanting to transfer elsewhere. After four years on such a list, the school is placed in *corrective action* and a state is required to take aggressive action toward improving the school, such as hiring new teachers or reconfiguring the school calendar. After five years of not making AYP, the state can impose an alternative governance arrangement on the school.

II. TENSIONS AND CHALLENGES

While NCLB is emphatic in folding all students under its accountability provisions, and clearly includes charter schools among those to be held accountable, it acknowledges the wide diversity in governance structures among the 39 jurisdictions that now permit charters. Depending on state laws, charter school authorizers may include state boards of education, colleges and universities, municipal bodies, special-purpose agencies, and – most commonly – local school districts. Some of these bodies are responsible only for charter schools, while others will be administering NCLB across all the public schools in their states and districts. Some have quite broad powers of oversight in their charter domains, while others operate under state laws that tightly circumscribe their authority. Some act as fiscal agents for their schools, while others have no role in delivery of local and federal funds. As the Act is implemented, it is reasonable to assume that this range of structures and legal authorities will yield different perspectives as to how authorizers should operate. Its language seems to invite experimentation in this regard – and gives states the latitude they need to work out thorny questions of implementation in the context of their own laws and oversight practices.

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[7] House Committee on Education and the Workforce, *Press Release: H.R. 1 Education Reforms Would Mean Immediate New Options for Students In Thousands of Failing Schools—Beginning in 2002*, December 13, 2001.

Authorizer Discretion

Section 1111(b)(1) of the Act mandates that each state's new accountability system will apply to all schools and students in a given state. It states that in order to access Title I funds:

> *Each State plan **shall** demonstrate that the State has adopted challenging academic content standards and challenging student achievement standards that will be used by the State, its local education agencies, and its schools...and that [these standards] **shall** be the same academic standards that the State applies to **all** schools and children in the State. (emphases added)*

However, while all public schools, including charter schools, will be subject to the new accountability requirements, NCLB maintains traditional federal deference to state law when it comes to determining exactly how charter schools should be held accountable. The Act provides in Section 1111(b)(2)(K), that:

> *The accountability provisions under this Act shall be overseen for charter schools in accordance with State charter school law.*

This clear statement is amplified by report language that deals more directly with the complicated question of charter oversight. Congressional negotiators approved a framework for state and authorizer action reflecting four discrete, but connected, strands of thought about what Congress intends.

First, the language reinforces the important point that charter schools are encompassed within the Act and subject to its provisions on standards, assessments, reports, AYP, and corrective actions (as indicated by reference to the specific sections of the Act) on these points:

> *Charter schools are public schools and therefore subject to the same accountability requirements of this Act as they apply to other public schools, including Sections 1111 and 1116, as developed in each state.*

Second, the report acknowledges the role of authorizers as the governing bodies directly overseeing charter schools, in effect saying that nothing the Act says about state or LEA authority should supersede the authorizer role:

> *However, there is no intent to replace or duplicate the role of authorized chartering agencies, as established under each state's charter school law, in overseeing the Act's accountability requirements for the charter schools that they authorize.*

Third, the report language reminds authorizers that they, too, have important performance obligations under the Act:

> *Authorized chartering agencies should be held accountable for carrying out their oversight responsibilities as determined by each state through its charter school law and other applicable state laws.*

Fourth, the paragraph ends on a cautionary note – that in holding authorizers accountable, states should avoid a cookie-cutter approach that would inhibit the very purposes for which charter laws were passed:

> *This should be done in ways that do not inhibit or discourage the approval or oversight of innovative, high quality charter schools.*

Challenges

There are at least seven challenges for charter school authorizers as they seek to meet the demands of NCLB. To illustrate how these tensions might play out, we have included a hypothetical case or example relative to each of these issues.

On its face, the Act seems clear about including charters under the provisions for improvement and corrective action. But there are several kinds of misalignment between this provision and the state laws under which authorizers and their schools operate. Parts of this problem are easily correctable, but others (especially those dealing with the contractual nature of charter governance) are more perplexing.

Challenge 1: Measuring School Performance and Setting the Bar

The first issue concerns the AYP benchmarks each state will be required to define. The Act states that AYP is to rely "primarily" on scores in state assessments, but the exact meaning of this term is yet to be defined. Though it is possible that a variety of rigorous indicators could take their place alongside the state assessment in a state's definition of AYP, test score analysis will undoubtedly be the primary indicator used to measure student and school performance. This is reinforced by language providing that additional indicators, if used, cannot reduce the number of schools identified for improvement (sec. 1111(b)(4).

What, then, is the best way to use test score data to measure performance? NCLB allows for a range of averaging techniques, e.g., simple schoolwide averages; averaging across grade levels; and rolling averages (including performance over two to three years).[8]

Simple schoolwide averages (or "snapshot analyses") are a popular tool for policymakers deciding how best to spend scarce resources, but they have serious limitations as a measure of school performance, especially for charter schools. Comparing single-year performance levels can result in substantial fluctuations in test scores due to measurement

[8] See "Adequate Yearly Progress: Results, Not Process" a paper by Lisa Graham Keegan, Billie J. Orr, and Brian J. Jones for the Fordham Foundation (January 2002), for a thoughtful discussion of rolling averages. Available online at: www.edexcellence.net.

error from year-to-year.[9] Further, single-year averages compare different cohorts of students from one year to the next. For example, a "snapshot" of Middletown Elementary's current fourth grade may include not only the students who were in the same school's third grade last year, but also a sizeable group who moved into the new housing complex next door, a fair number of students who were in and out of school both years due to homelessness and migration, and a few who were held back a year. These problems are amplified in public schools and school districts that are small or serve highly mobile populations because a) adding or losing a few students can lead to significant shifts in a school's or district's average ; and b) schools serving highly mobile students may be comparing very different student populations from year to the next.

"Rolling averages" appear to provide a more statistically reliable analysis. By averaging scores from the previous two years of a given school with the current year's results, policymakers can reduce the fluctuations present in annual average comparisons.

With their flaws, average proficiency levels still provide important information on whether a given population of students can read and compute. As we will argue below, it is advisable to complement these approaches with some form of value-added analysis to track individual students over time.

Charter schools may be affected more directly than any other sector. For the reasons stated above, their performance is generally more difficult to measure than large traditional schools and school systems because they are typically small (approximately 250 students on average) and because they often serve urban populations with high mobility rates. Also, in their early years, charter schools often grow by adding a grade level each year. Under these circumstances, "snapshots" that portray an average of whole-school performance may compare very different groups of students from one year to the next.

Two key factors in measuring performance are a) the process for analyzing the data, and b) where to set the bar, i.e., how good is good enough? Case 1 illustrates the situation of an authorizer that has set the bar higher than the state – raising the question of which threshold should trigger corrective action.

Case 1: AYP and Setting the Bar. An authorizer in a state that had not yet ratified its definition of AYP established an accountability plan with Pioneer Charter School. The plan called for the school to make average annual proficiency gains of 10% on the state's math test. The next year, the state announced its definition of AYP and it called for schools to make 5% gains in average proficiency annually. If the school meets the state's lower threshold, but falls short of the goals established in its accountability plan, should the authorizer be required to impose sanctions on that school?

[9] Kane, Thomas J., et al. "Assessing the Definition of 'Adequate yearly Progress' in the House and Senate Education Bills." July 15, 2001.

Challenge 2: Potential Misalignment of Timelines

An authorizer's most fundamental accountability decision is whether to renew a charter; these decisions must be made every three to five years in most states. As the Attachment illustrates, NCLB requires states to set annual improvement objectives in equal increments over a 12-year period, with corrective action kicking in after two consecutive years' failure to meet the prescribed goals. How will authorizers correlate these two sets of obligations?

A related issue is when to "start the clock" on performance targets and corrective actions for new public schools, including charters. Roughly half of all charter schools are less than four years old. Because *all new schools* – charter and otherwise – need time to get established, does it make sense to consider assessing baseline performance levels for any new school, charter or otherwise, after its first or second year?

Case 2: Misalignment of Timelines. Progress Public Charter School opens with an enrollment of 50 ninth grade students in year one (2003-4) and it plans to increase enrollment by 50 students per year for four years. PPCS is located in a state with a 15-year charter with five-year reviews. The performance of the school's first cohort has continued to improve over time, but the school's average performance falls below the state's proficiency threshold for AYP because the school adds large numbers of below-average performers each year. In 2006-7 (the school's fourth year of operation), the state calls for corrective action to be taken. The school challenges the label, citing a provision in its charter that it would not be formally reviewed for another year. Does the school have a defensible argument?

Challenge 3: Contractual Provisions vs. Federal Obligations

Another question involves the relative weight of existing charter agreements in the context of new measures states will adopt under NCLB. Here, it is important to understand that charters actually are *contracts* between a public agency and (in most cases) a nonprofit corporation. The force of these contracts is underscored by the fact that private and public entities, often including the federal government, have given funds to charter schools based on promises made in their charters. While many authorizers and schools may choose renegotiation of contracts rather than confrontation, the following case illustrates a less sanguine outcome:

Case 3: The Power of Pre-Existing Contracts. State law allows school districts to issue charters. One district decides on a very literal reading of Sec. 1116, and administers charter school accountability exactly the same as for other public schools. It creates accountability plans aligned with State benchmarks, and when charters fall behind it uses the remedies prescribed by NCLB (demanding a change in curriculum, seeking to oust a principal, and requiring the school to pay for supplemental services with its Title I funds). One of its schools files suit for breach of contract, claiming that according to its charter,

the authorizer has no authority to intervene in the school's personnel decisions or to take its grant funds. The District says it was following federal law, which supersedes a local contract. Which prevails?

Challenge 4: Measuring the Performance of "At-risk" Students

The problem of measurement becomes more complex when students start well below the expected baseline and progress at a rate that is slower than AYP. Many charter founders set out to serve "at-risk" student populations. Roughly a quarter of new charter school founders nationally (25.9%) start their schools to serve special populations of students.[10] In some states, such as Texas, nearly half of the open-enrollment charter schools (83 of 167) are specifically designed to serve at-risk student populations.[11]

Case 4 illustrates the situation of a charter school whose population has really been "left behind" but whose growth might be missed by AYP measurements.

Case 4: Measuring the Performance of At-Risk Students. A charter school serves at-risk teens who have dropped out of school or are involved in the juvenile justice system. By definition, the students who enroll each year are far behind their peers. It is pretty certain that in any given year, this school's average test scores will fall below the state's benchmark for AYP – but it can demonstrate approximately two years' growth on average in annual test scores for each cohort that moves through the school. Will this school be subject to penalties under NCLB? How does the authorizer recognize the school's accomplishment in light of state AYP requirements?

The resolution of Case 4 might be addressed by the "safe harbor" provision of Section 1111(b)(2)(I). The provision says that if a particular subgroup fails to make the AYP benchmark, but the school makes a 10% reduction in the proportion of that subgroup rating as non- proficient, and if that group also makes progress on one or more other academic indicators, the school will be considered to have made AYP for that year. However, educators should be clear-eyed about the limitations of this provision and the modest help it is likely to provide. Existing state policies define "proficiency" at different points relative to percentiles and stanines on norm-referenced tests. Depending on where that bar is set, it may be very difficult for these students to reach proficiency, especially in the high school grades. For example, if a disadvantaged group enters a particular high school at the 15th or 20th percentile – not an uncommon circumstance –

[10] U.S. Department of Education (2000). The State of Charter Schools, Fourth Year Report.
[11] TEA (March 2000). "Texas Open-Enrollment Charter Schools, Third Year Evaluation, Part Two." Texas Center for Educational Research, Austin, TX.

then moving 10 percent of that group to proficiency in any given year will be no small achievement.[12]

Challenge 5: Different Approaches to Corrective Action

When to apply corrective actions may be a less difficult problem than *how* to apply sanctions that differ from established authorizer practice, or that may be expressly prohibited under state charter statutes.

As described above, if a public school does not meet AYP for two or more consecutive years, the LEA is required, among other remedies, to a) notify parents of other options; b) provide technical assistance; and, if failure persists in subsequent years, c) intervene in the school's personnel decisions, choices of curriculum or governance. These remedies may raise the following questions for authorizers:

- *Will the "technical assistance" remedy be problematic?* Many authorizers refrain from direct technical assistance in the belief that it can undermine their accountability role. Further, most do not now have the capacity to provide this kind of help, especially over a large geographic region.
- *Is it warranted to engage in "intervention" remedies if they are expressly forbidden under charter laws?* Charter school laws give schools, not authorizers, responsibility for personnel decisions. With respect to curricula, these laws typically allow authorizers to approve a curriculum as part of the application process, but thereafter, put the school in charge of implementation.
- *Would the "reconstitution" remedy (after five years of not meeting AYP) simply require the authorizer to revoke the school's charter?* Given the right data, authorizers have the power to revoke a charter at any point. If a school's charter were not renewed after five years of sub-par performance, this would seem to meet the "alternative governance" remedy stated in the law. Would the authorizer need to find an alternative management structure for a failing charter school or could it simply revoke the school's charter and re-enroll the students in their local public schools?

The question is whether and how states will allow authorizers to adapt their existing accountability practices to the ends intended by the Act. An authorizer with a well-developed accountability program may now, for example, impose academic probation on a school that chronically fails to meet its achievement targets. While this remedy is not stated in NCLB, states may find it a viable substitute for some of the measures noted above.

Case 5 illustrates how the current corrective actions being employed by charter authorizers (such as probationary status) may conflict with those mandated in NCLB.

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[12] Of course, that achievement will be easier to accomplish if states define "proficiency" at significantly lower levels. While this might keep more schools out of corrective action, it would also represent an erosion of the national commitment to high standards at the heart of the new federal legislation.

Case 5: Determining the Appropriate Corrective Action. An authorizer has aligned its accountability plans with the State's Adequate Yearly Progress benchmarks. One of its schools fails to make AYP two years in a row. The authorizer reviews the remedies provided under Sec. 1116 and decides that none is appropriate for a charter school. It also finds that since the school serves a high-poverty population, depriving the school of a portion of its Title I funds to allow parents to buy supplemental services would threaten its solvency. The authorizer decides instead to place the school on *academic probation*, which it is permitted to impose under state law and which is its standard remedy in similar situations. It further decides to give the school an additional year before instigating charter revocation. Is this allowable under NCLB? Which approach – the authorizer's or the SEA's - has a better chance of improving the school?

Challenge 6: Charter-specific Goals May Get Lost in Efforts to Meet New State Targets.

Close to two-thirds (64.4%) of new charter schools nationally were started because the founders sought an "alternative vision for education."[13] One of the challenges in building upon an existing state system will be the "floor vs. ceiling" problem. Authorizers grappling with new state accountability provisions may come to see them as a minimum threshold, or as a *de facto* replacement for their existing oversight systems. If this discourages charter founders from bringing forward new educational approaches, it could well "inhibit or discourage the approval or oversight of innovative, high quality charter schools" as congressional conferees warned.

The following case may be an "easy call" in a legal sense, because nothing in NCLB should prevent an authorizer from shutting down a school that is not meeting the terms of its charter. However, it illustrates how AYP requirements might be used to blunt the sharp edges of charter innovation.

Case 6: ESEA and Mission-Driven Charters. Technology Charter HS opens in 2003. Its application promised computers in every classroom, online tutorials, mentorships with software engineers, and an intranet linking parents with teachers. In 2008, the authorizer decides not to renew the charter because none of these things has happened. The school argues that it has had to devote inordinate resources to building the reading and math skills of its students – and indeed, boasts that it has exceeded the state AYP benchmarks handily in each year of its existence. Can the school forestall its closure by appealing to state authorities on this basis?

[13] USDOE (2000). Fourth Year Study of Charter Schools.

Challenge 7: NCLB May Add Significantly to the Administrative Burden of Charter Schools with LEA Status

Sections 1112 and 1116 of NCLB require that districts, otherwise known as local education agencies (LEAs), create detailed plans for monitoring school performance, reporting that performance (in disaggregated form) to the public, and providing technical assistance in the case of failing schools. While these requirements make sense for districts that serve several schools, they might create a significant burden on individual charter schools that are designated as LEAs. Indeed, they pose the same problem for the single-school districts (also LEAs) whose numbers likely exceed those of charter schools.

For example, the Act requires LEAs to provide assurance tnat 10 percent of Title I funds will go toward professional development. After three consecutive years of not meeting AYP, the Act also requires LEAs to provide (or pay for) transportation to another school served by the LEA, and to use up to 5 percent of their Title I-A funds for such purpose. If a school again fails to make AYP in its fourth consecutive year, the LEA must, among other things, continue to provide public school choice and use a prescribed portion of Title I funds to pay for supplemental services or transportation. Each year a school fails to achieve AYP, corrective actions escalate, culminating in reconstitution or outsourcing the school's management. Not only may these corrective actions be at odds with existing accountability agreements, as noted above, but the requirements for LEAs to fund specific remedies would also fall heavily on charter schools with LEA status. In fact, reliance on LEA-based remedies, taken literally, would mean that charters designated as LEAs would be required to police themselves. We raise this issue to bring its implications to light so that schools and authorizers can appropriately prepare for responding to these new expectations.

III. HOW MIGHT STATES RESPOND?

Given these new requirements, states and authorizers will face a range of choices in aligning their approaches to accountability.

The task may be relatively straightforward in the 15 states that have content standards, performance standards, and aligned yearly assessments already in place. Because charter schools are required to take state assessments, authorizers in these states may be called on to integrate new AYP benchmarks into existing charter agreements and accountability plans. Doing so will make the important point that charter schools can be held accountable to the same standards as traditional public schools. It will also help eliminate duplication in data collection and reporting, thus reducing the daunting administrative burden or *oversight overload* on charter schools. And it may simply be more efficient for authorizers who lack the capacity to create a system from scratch.

The US Department of Education's draft regulations allow states that do not currently have annual assessments to use a mix of state and local tests that meet standards of rigor and comparability. This raises the possibility that charter schools (or at least those that

have LEA status) might be able to use their own choice of tests as the "local" component of that mix.

But for the majority of states, whose accountability systems are still under development, NCLB provides a broader opportunity. State officials and authorizers can join forces to develop innovative new oversight strategies that combine high standards of achievement, innovative approaches to measurement, and respect for the variety of public school missions and practices.

Some states have already established policies that might be consulted as models of cooperation among charter and district schools:

- The Texas Education Agency applies an alternative accountability program to *all* schools, not just charter schools, serving at-risk students. Under SBOE rule 19, TAC §97.4, the Commissioner of Education is authorized to establish additional criteria for the assignment of 2002 campus ratings to campuses which serve unique populations and/or which provide alternative education programming to students who are at risk of dropping out of school.[14] Similarly, Texas provides a grace period for all new schools entering their state accountability system, TAAS. So, before new charter schools are engaged in the TAAS system, the TEA provides them with a year, "To establish the administrative and instructional oversight to comply with all Texas statutes and rules related to public education."[15]

- The Massachusetts state education agency has incorporated a site visit process for its low-performing schools that was inspired by the state's charter school authorizer oversight process.

The Importance of Value-Added Analysis

One approach that can be helpful in measuring the performance of *all* schools is the use of value-added analysis to track gains in student achievement over time. Having an understanding of which students are "proficient" in core subject areas is central to NCLB and important information for all stakeholders. However, value-added analysis can be an important additional component of an authorizer's accountability system because it can capture student progress toward proficiency over time.

Value-added models currently in use, such as those in Tennessee and Texas, paint a more complete picture of student progress for state and local officials than conventional annual averages. Far more important, they provide a rich resource for teachers in the classroom and for administrators evaluating the impact of teachers and schools because they are based on student-level data rather than school averages.

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[14] To see a side-by-side comparison of standard accountability procedures versus alternative accountability procedures, please see: http://www.tea.state.tx.us/account.eval/aeam0102.doc.

[15] 2001 Accountability Manual for Texas Public Schools and School Districts: Texas Educational Agency Department of Accountability Reporting and Research.

NCLB's requirement for annual testing in grades three through eight will enable states to track performance over time, but it does not *require* them to do so. Even so, the Act recognizes the importance of value-added analysis and specifically encourages its use.[16] Title I, Part A, Section 1111(b), subsection 3(B) states that:

> *Each state may incorporate the data from the assessments under this paragraph into a State-developed longitudinal data system that links student test scores, length of enrollment, and graduation records over time.*

Given the Act's emphasis on full proficiency within 12 years, state and district officials are likely to direct most of their attention to measuring attainment of standards-based benchmarks. But by capturing improvements over time, states and charter authorizers can meet this obligation while also producing performance information that will help schools improve.

CONCLUSION.

Over the coming months, authorizers, state education officials, and charter school leaders will negotiate a balance between accountability and autonomy. Educators will be obligated to demonstrate that public education dollars are being spent wisely, and states will create or expand the systems for holding schools accountable. But the new systems will only succeed in spurring real improvement if they are flexible, succinct, and user-friendly enough to generate needed data without burying principals and superintendents under reams of paperwork.

This brief has highlighted seven specific tensions that may arise in the forthcoming relationship between charter schools and NCLB. There will be others as the law is implemented. For example, one longer-term challenge, not addressed in this brief, is the question of authorizer capacity. By creating a stringent accountability mechanism for all public schools, and then specifically underscoring the role of charters as an option for parents of students in failing schools, the Act may precipitate even faster growth than the charter school sector has already enjoyed.[17] This expanded demand will surely increase the pressure on authorizers to create and maintain effective programs of accountability and oversight.

Despite the need to negotiate and resolve the issues raised here, there remains a striking commonality of interests between the charter community and other segments of public education. No Child Left Behind is built on the premise that standards should be fixed

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[16] There are two US DOE provisions for developing longitudinal databases: under Title VI, Part A, Section 6111 and under Title I, Part E, Section 1501 (b). In addition, Educational Technology funds under Title II Part D(1) can be used to support the development of school information management systems.

[17] Section 1116 (b)(E)(i), states: In the case of a school identified for school improvement under this paragraph, the local educational agency shall, not later than the first day of the school year following such identification, provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency, which may include a public charter school.

centrally within each state, but that the means to achieve them should be determined locally – the same vision that has animated the charter movement since its inception. Charter schools provide a microcosm of the push and pull that will likely occur at all levels of education oversight as the impact of NCLB ripples across the states. This is a point worth remembering as states and authorizers come to terms with the challenges outlined here.

Attachment: Timeline for Corrective Action

2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
'Starting Point' – The data from this year must be used by States to establish the starting point for measuring Adequate Yearly Progress (AYP).	'Verification Year' – Schools not meeting AYP at the end of the prior year, as well as at the end of the current year, must be identified for 'school improvement' prior to the next school year (after an opportunity 'to review and present evidence').	For schools identified for school improvement, the local educational agency (LEA) must: ➢ Consistent with State law, enable each student in such a school to choose to attend another public school (including charter school) that has not been identified for school improvement.* ➢ Provide technical assistance (directly, or through other public, private, for-profit and non-profit entities); and ➢ Notify parents of the AYP problem and the plan to address it, and the options available to such parents. The identified school must: ➢ Develop a school plan to address AYP	If a school again fails to make AYP at the end of the prior year, the LEA must: ➢ Continue to provide public school choice to all students enrolled in such school. ➢ Make supplemental educational services available to such students. * ➢ Continue to provide technical assistance. ➢ Continue notification to parents and the options available. *In providing supplemental services, the LEA must use 5% of their overall Title I-A funds. In addition, 10% of their Title I-A funds may be used for either transportation costs related to school choice or for supplemental educational services.	If the school fails to meet AYP again, it is in "corrective action" and the LEA must: ➢ Continue to provide public school choice. ➢ Continue to offer supplemental educational services. ➢ Continue to provide technical assistance. ➢ Take at least one of the following additional corrective actions: replacing staff relevant to the failure; institute new curriculum; decrease management at the school level; appoint an outside expert to advise the school; extend the school year or day; or restructure the school's internal organization. ➢ Continue notification to parents and the options available. *Note: An LEA may delay, by not more than 1 year, implementation*	If the school fails to meet AYP again it is subject to alternative governance, and the LEA must: ➢ Continue to provide public school choice. ➢ Continue to offer supplemental educational services. ➢ Continue notification to parents and the options available. ➢ Prepare a plan and make necessary arrangements (consistent with State law) to implement an alternative governance arrangement to **begin not later than the first day of the next school year,** which must include one of the following – • Reopening the school as a charter school; • Replacing all or most of the staff; • Entering into a contract with an entity, such as a

Attachment: Timeline for Corrective Action

2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
		problems, (which may include such things as the "implementation of a comprehensive school reform model"), as well as provide assurance that 10% of funds will go toward professional development. *LEAs must provide (or pay for) transportation and must use up to 5% of their Title I-A funds for such purpose.		*of supplemental services, corrective action, or restructuring if "the school makes AYP for 1 year or if its failure to make AYP is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA or school."*	entity, such as a private management company, to operate the school; • Turning the operation of the school over to the State; or • Any other major restructuring necessary to improve student achievement.

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